Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

In The

SUPREME COURT OF THE UNITED STATES

---

*In re A.*LIPKO JR.

V.

M. CHRISTIE

Petition for a Writ of Certiorari to the

United States Court of Appeals for the

Second Circuit

PETITION FOR A WRIT OF CERTIORARI

A. . LIPKO JR
P.O. BOX 536
NEW HAVEN, CT. 06503
(NO PHONE)

26pp

QUESTIONS PRESENTED

Does a judgment of a permanent injunction not to appeal to a higher court by a State Superior Judge violate the constitutional right to under the 14th Amendment of the U.S. Constitution, Substantive Due Process Fundamental Rights/Equal Protection Rights?

Does a judgment of a permanent injunction not to appeal to a higher court violate Title 42, U.S.C., Section 1983, Civil Action for Deprivation of Rights?

Would denial of Petition of Certiorari deprive thousands of public Citizens Probate Justice?

Was there a need to issue a permanent injunction after the Petitioner appealed to the Connecticut Supreme Court and was denied; the Case was ended; and the Estate was closed?

Has the following U.S.C., Title 28, Section 1343,(to redress the deprivation, under color of any state law, providing for equal rights of U.S. citizens) been violated.

LIST OF PARTIES

PETITIONER:

A. LIPKO JR.
P.O. BOX 536
NEW HAVEN, CT 06503

RESPONDENT:

M. CHRISTIE
RFD #1
PLAINFIELD, VT

ATTORNEY OF RESPONDENT:

CHRISTINE GONILLO
185 N. BROAD ST.
MILFORD, CT 06460

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

PARTIES.....ii

TABLE OF CONTENTS.....iii

INDEX OF APPENDICES.....iv

TABLE OF AUTHORITIES.....v

ORDERS.....vi

JURISDICTION.....1

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED.....3

STATEMENT OF THE CASE - 1.....5

STATEMENT OF THE CASE - 2.....7

ARGUMENT - STANDARD OF REVIEW.....11

REASONS FOR GRANTING THE WRIT.....11

CONCLUSION.....18

INDEX OF APPENDICES

APPENDIX A:

Order of the United States Court of Appeals, Second Circuit, Decided 4/6/00..... 1a

Order of the United States District Court Decided 8/18/99..... 2a

APPENDIX B:

Orders of the Connecticut Appellate Court, 11/14/96..... 3a

12/10/97.....4a

6/5/96.....5a

Appeal Appellate Court # 15898.....6a

Appeal Appellate Court # 15095.....7a

Probate Court Order, 8/15/95.....8a

TABLE OF AUTHORITIES

CASES

Bounds v. Smith, 430 US 817, 52L ED 2d. 72, 97 S Ct491.....13

City Savings Bank of Bridgeport v. Dessoff, 3 Conn. App.664, 647,491 A.2d 24,426.....16

Clifton v. Attorney General of State of Cal. C.A. 9 (Cas.) 1993, 997 F.2d 660.....18

Maine v. Thiboutot, U.S. Supreme Court Reports, 448 US 1, 65L Ed. 2d 555, 100 S Ct 2502.....12

Singleton v. Woods, C.A. 7 (Ill.) 1971, 440 F.2d 835.....18

State v. Evans, 165 Conn. 61.....16

Williams v. Scurr, D.C. Iowa 1986, 528 F. Supp. 62, affirmed 665 F.2d 212.....18

ORDERS - BELOW

The United States Court of Appeals, the 2nd Circuit Judge Calabrese stated that the Petitioner must go to the United States Supreme Court over controversies between the United States and the State of Connecticut. The Appeals Court does not have jurisdiction over this matter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States,
Amendment 14, Substantive Due Process,
Fundamental Rights/Equal Protection Rights.....3
Article III, Original Jurisdiction.....2

Courts, Sections 757, Abstention Doctrine.....11

United States Code, Title 28, Sec. 1343, 1441,
1442, 1443.....3
1251, 1253, 1257, 1651, 2241, 2254.....1

Deprivation of Rights, Title 42, Sec. 1983.....3

Judicial Reform Act of 1998, H.R. 1252.....11

32 Am Jur 2d, Fed Pract 242.....12

Connecticut State Statutes, Appeals from Probate
Chapter 796, Sec. 45-288.....17
Sec. 51-199.....6
Appellate Procedure, Sec. 4038.....10

Connecticut Constitution, Article 1, Sec. 10.....11

JURISDICTION

The statutory authority for issuance of extraordinary writ of the Court's Appellate Jurisdiction is 28 U.S.C. Sections 1651(a), 2241 or 2254(a), wherein it is provided that the court is authorized to issue said writ in any cause where a final judgment has been passed upon by the highest court of a state and adequate relief cannot be obtained in any other form or from any other court. A Writ will be granted with respect to any claim that was adjudicated in a State court proceeding when the adjudication of the claim--(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding; or (3) the applicant has exhausted the remedies available in the courts of the State; or (4) there is an absence of available State corrective process; or (5) circumstances exist that render such process ineffective to protect the rights of the applicant.

Wherein it is also provided that the court is authorized to issue said writ in any cause between a State, or the citizens thereof, and where any party may appeal to this court for relief after notice and hearing on interlocutory or permanent injunction in any civil action.

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Sections 1251, 1253, and 1257 as follows: Sec. 1251. Original Jurisdiction--In all Cases* in which a State shall be a Party , the Supreme Court shall have original jurisdiction. Sec. 1253. Direct appeals from decisions of three-judge courts--

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. Sec. 1257. State courts; certiorari--The statutory authority for issuance of a petition for an extraordinary writ wherein it is provided that the court is authorized to issue said writ in any cause where a final judgment has been passed upon by the highest court of a state and where any title, right, privilege or immunity is specially set up or claimed under the Constitution of the United States.

Therefore, final judgments rendered may be reviewed by the Supreme Court by writ, where the validity of a treaty or statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States.

Article III, Section 2: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;* to Controversies to which the United States shall be a Party;* between Citizens of different States;* between a State, or the Citizens thereof*.

In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact.

Jurisdiction founded on diversity of citizenship and amount. Petitioner seeks damage to reputation and person. Jurisdiction founded on the existence of a Federal question.

The 2nd Circuit Appeals Court dismissed the Appeal on April 6. 2000. No rehearing Application was filed. The Appeal is from a Final Order or a final judgment that disposes of all claims with respect to all parties.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Amendment XIV. Sec. 1. "All persons born or naturalized in the United States. and subject to the jurisdiction thereof. are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life. liberty. or property. without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
2. Title 42. United States Code. Section 1983: "Every person who. under color of any statute. ordinance. regulation. custom. or usage. of any State or Territory or the District of Columbia. subjects. or causes to be subjected. any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights. privileges. or immunities secured by the Constitution and laws. shall be liable to the party injured in an action at law. suit in equity. or other proper proceeding for redress. For the purposes of this section. any Act of Congress applicable exclusively to the District of Columbia."
3. The District Courts shall have original jurisdiction under the following sections of the United States Code. Title 28; Sections 1331. 1332. 1343. 1441. 1442 and 1443. Sec. 1331. "*of all civil actions arising under the Constitution. laws or treaties of the

United States. Sec. 1332. "(a)*(1) citizens of different States*." Sec. 1343. "(a)*(1) to recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." Sec. 1441. "(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." Sec. 1442. "(a)*(3) Any officer of the courts of the United States, for any Act under color of office or in the performance of his duties." Sec. 1443. "Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot

enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States. or of all persons within the jurisdiction thereof: (2) For any act under color of authority derived from any law providing for equal rights. or for refusing to do any act on the ground that it would be inconsistent with such law."

STATEMENT OF THE CASE - 1

Defendant/Lipko was served on or about February 29, 1996, by Sheriff W. Stuart, a summons and complaint for a temporary or permanent injunction, with count II vexatious litigation. The temporary injunction was denied by Judge Rush, on 4/8/96.

Defendant had to defend himself in State Superior and Appellate Courts from 2/29/96 to 8/28/98. Judgment issued against Defendant by Superior Court Judge H. Curran, on 8/15/97, was a Permanent Injunction against Defendant not to appeal the judgment of Judge Hugh C. Curran to a higher court with Count II Vexatious Litigation. Plaintiff/Christie seeks claim, triple damages, for $43,648.55 in damages against Defendant. The purpose of the permanent injunction with count II vexatious litigation was the unlawful ulterior purpose of not reporting $95,014.73 in Estate Assets by C. Gonillo and M. Christie.

Defendant, in State Court, filed complaint in District Court against Superior Court Judge Hugh C. Curran's Permanent Injunction, alleging Abuse of Process and Malicious Prosecution. See Record, Civil Cover Sheet, and Record, Objection to Motion to Dismiss, Exhibit B, Memorandum of Decision. Appeal was dismissed by District Court on 8/18/99. District Judge failed to advise

the Petitioner of his appeal rights. Appeal was taken to the 2nd Circuit Appeals Court.

On 3/28/2000. 2nd Circuit Federal Judge Calabresi informed Petitioner that he must go back to the State Appellate Court to Exhaust State Remedy. Petitioner's response was that the State Appellate Court granted a claim for damages and dismissed the Case. Petitioner advised the Judge that the State Supreme Court refused to hear the Appeal even under 51-199. by Law. they must hear the Appeal.

Pursuant to Connecticut State Statutes. Sec. 51-199. Jurisdiction (b). the following matters shall be taken directly to the Supreme Court: (1) Any matter brought pursuant to the original jurisdiction of the Supreme Court. (2) An appeal in any matter where the Superior Court declares invalid a state statute or a provision of the State Constitution.

Judge Calabrese informed the Petitioner that the Appeals Court does not have the jurisdiction to grant the relief requested; and that the Supreme Court is the only court that has jurisdiction over controversies between the United States and a State.

The matter started in Probate Court, with appeals to Superior, Appellate, and Supreme Courts; then back to Superior Court for Trial; appealed to Appellate, Supreme, U.S. District and 2nd Circuit Appeals Courts. The matter has been in every court. from the lowest to the highest in the United States.

STATEMENT OF THE CASE - 2

The Nature of the Case is an Estate: and the Rights of the Beneficiary to appeal under the 14th Amendment of the U.S. Constitution. See 2nd Circuit Appeal Clerk Record. Appendix. pp. 35-38. Objection to Motion to Dismiss. Exhibit C. Form S-1. When the Petitioner produced bank accounts that were not on the S-1. Succession Tax. he was refused any opportunity in the Probate. Superior. Appellate and Supreme Courts to have these bank accounts looked into. Record: Brief. p. 4. Total amount of bank accounts not reported. $95.014.73.

The Second Appeal from Probate was filed because of failure to file the Succession Tax on time. It was filed 7 months late. Total Taxes and Interest Due: $22.208.11. including Penalty and Interest. Appendix. p. 30; and Record: Objection to Motion to Dismiss. Exhibit H. p. 5. Brief.

Appeal was taken and heard in the Superior Court on 4/24/95. with Judge Comerford. Judge Comerford denied all motions of Petitioner. Appendix 44.

Appeal was taken on 8/11/95 to the Appellate Court. Appendix. p. 45. In the meantime. the Probate Court had the Final Accounting on 8/14/95. closed the Estate and Ordered Fiduciary to distribute the residue. Appendix. p. 46. and Record: Objection to Motion to Dismiss. Exhibit I.

Appellant received from the Appellate Court. Dismissal of A.C. 15095. dated 10/25/95. Appendix. p. 51.

On or about 2/29/96, Plaintiff/Christie, hereinafter, Plaintiff, through Sheriff W. Stuart, served on Defendant/A. Lipko Jr., hereinafter, Defendant, a summons, application for a temporary or permanent injunction and count two vexatious litigation. Record: Objection to Motion to Dismiss, Exhibit E.

On 4/8/96, there was a combined hearing, on Appeal Rights; and the Temporary Injunction, which was denied.

On 6/5/96, the Appellate Court ordered the following: "It is Ordered, sua sponte, that the Appellant/Lipko is prohibited from filing any further appeals or motions in this Court, as to the underlying action, CV-95-0049467S. Appendix, p.64.

Motion for late Statement of Issues, by Appellees, filed 6/25/96, Granted. Appellant's Objection is Overruled.

Defendants/Appellee's (Gonillo) Motion to Strike Plaintiff/Appellant's (Lipko) Issues is Granted as to the first three Issues, and the fourth is Dismissed. Appellant/Lipko's Motion for Review is Dismissed. Dismissal Order, A.C. 15898. Appendix, pp. 65068.

In the Superior Court, CV-96-0053297S, Defendant/Lipko's hereinafter, Defendant, Motion to Dismiss, 8/6/96, Motion to Strike, 9/11/96, and Motion for a Jury Trial were all denied. Appendix, pp. 69-70. Defendant then wrote Chief Court Administrator, Judge Aaron Ment, asking with two motions, for Postponement or Continuance. Record: Motion for Order to Remove Cases from State Courts, attached Order, dated 4/21/97. Order states: "Motion should be filed in proper clerk's office*." Judge Ment gave the

Defendant the run around. Appendix. p. 71. Judge Ment was retired in 1/99, after Objection to Motion to Dismiss was filed with the U.S. District Court. Appendix. p. 72.

Petition for Certification on A.C. 15898 was taken by Appellant/Lipko to the Supreme Court. and Denied on 12/19/96. Appendix. p. 73.

The Appeal was taken by Defendant to the Appellate Court. on 12/2/96. A.C. 16656. on Motion to Dismiss. Objection to Motion to Strike the Jury List. and Motion to Strike the Complaint. The Appellate Court. on Motion to Dismiss. filed 1/2/97. by the Appellees (CV-96-0053297S). Granted the Motion to Dismiss on 2/11/97. Appendix. pp. 74-75.

The Appeal by Defendant was taken to Petition for Certification on A.C. 16656. on 2/28/97. The Supreme Court. on the Appellees' Motion in Opposition to Petition for Certification. filed 5/18/97. Granted that Motion on 4/3/97. Appendix. p. 76.

The Defendant/Lipko wrote Probate Judge (B. Joy) on 4/21/97. stating that he had bank accounts not reported. The Probate Judge previously had refused verbally to account for the "Unaccounted for" Bank Accounts. Later. the Probate Judge reversed himself on the bank accounts. in a letter. on 4/28/97. and ordered the bank accounts reported. He resigned when the permanent injunction was issued. He had one (1) year left to serve. Appendix. p. 17: and Record: Objection to Motion to Dismiss. Exhibit I: and Memorandum of Law in Support of Motion for Order. Compelling Disclosure Order. filed 3/1/99.

The Trial took place on 5/1/97 and 5/2/97 at the Superior Court. Ansonia Milford. and the Judgment was a Permanent Injunction against the Defendant. Appendix. pp. 77-84; and Record: Objection to Motion to Dismiss. pp. 10-14; and Memorandum of Decision. 8/15/97.

Appeal was taken on 9/4/97. A.C. 17591. on the Final Judgment of the Vexatious Litigation. Matter of Damages. Appeal was sent in with the request that the Supreme Court hear the Appeal. because under 51-199 of the Connecticut State Statutes. the Supreme Court must hear the Appeal. It was assigned Docket #S.C. 15762. Appendix. p. 85.

Francis Drumm. Chief Appellate Clerk. transferred the Appeal to the Appellate Court under Docket #A.C. 17591. Appendix. p. 85.

Appellant filed a Motion to Transfer A.C. 17591 back to the Supreme Court. It was denied on 11/14/96. Appendix. p. 87.

The Appellate Court adjudicated the matter on 12/10/97. with the Order.A.C. 17591. Appendix. p. 88.

Motions for Review were filed on 11/4/97. 11/17/97. 11/20/97. 11/25/97 and 6/1/98. All were denied to justify the permanent injunction. Appendix. pp. 89-93.

Under Rules of Appellate Procedure. Sec. 4038. Appellant withdrew A.C. 17591. and filed a Motion to Transfer to U.S. District Court on 8/10/98. Appendix. pp.95-102; and Record: Objection to Motion to Dismiss. Exhibit A. On 8/13/98. Appellant received Notice from the Chief Clerk's Office of the Appellate Court. which

read: "Not properly before this Court." which is a fraudulent notice. Appendix. p. 72.

On 8/28/98. Appellant filed Complaint of "Abuse of Process" in the U.S. District Court. Record: Civil Cover Sheet and Complaint.

Appellate Court Dismissed A.C. 17591 on 8/30/98.

Complaint was dismissed by the U.S. District Court. Bridgeport. CT on 8/18/99. Appeal was dismissed by 2nd Circuit Appeals Court on 4/6/2000.

ARGUMENT - STANDARD OF REVIEW
REASONS FOR GRANTING THE WRIT

State Courts violated the following: Title 42, U.S.C., Sec. 1983, "Deprivation of any Rights, Privileges, or Immunities*"; The Constitution of the United States, Amendment 14, Substantive Due Process/Fundamental Rights/Equal Protection Rights; Courts, Abstention Doctrine, Section 757; Judicial Reform Act of 1998, H.R. 1252; and the State of Connecticut's "Open Courts" provision of the Connecticut Constitution, Article 1, Section 10, the Right of Redress for Injuries; through Superior Court Judge Curran's Judgment on 8/15/97.

A beneficiary to an estate has the right to a full accounting of the estate.

There was prejudice, collusion in the Probate, Superior, Appellate, and Supreme Courts. Therefore, the State Courts could not adjudicate the Case in an

unbiased manner: leaving the Appellant no alternative but to remove the Case to the Federal Court.

The Supreme Court cannot monitor due process. However, where the highest state court has construed a statute in a way that threatens rights under the Constitution, the granting of a Writ is in order.

"•Jurisdiction of the Supreme Court to review the proceeding of the state courts• is limited to the specific instances of denials of federal rights." (32 Am Jur 2d, Fed Pract Sec. 242).

"Only in circumstances where the judgment of the state courts as to the construction and application of state statutes collide with rights secured by the Federal Constitution does the Supreme Court have power to protect or enforce the federal rights." (32 Am Jur 2d, Fed Pract 242)

"Thus, certiorari may be allowed where it is claimed that the decision of the state court involved an infringement of some provision of the Federal Constitution. Such as the clause relating to full faith and credit, the impairment of obligations of continual due process, or equal protection of the law." (32 Am Jur 2d, Fed Pract 259)

Citing Maine v. Thiboutot U.S. Supreme Court Reports, 448 U.S.1, 65L Ed. 2d 555, 100S Ct 2502. On Certiorari, the U.S. Court affirmed. In an opinion by Brennan, "•provides that anyone who, acting under color of state law, deprives another of rights, privileges, or immunities 'Secured by the Constitution and laws' shall be liable to the injured party•."

Citing Bounds v. Smith 430 US 817, "In an opinion by Marshall, it was held that the fundamental constitutional right of access to the courts required state prison authority to access inmates in the preparation and filing of meaningful legal papers."

State Superior Court Judge H. Curran, decided an important question of the federal law that conflicts with relevant decisions of this Court.

The first instance where Lipko's U.S. Constitution, Amendment XIV Due Process Rights were violated occurred at a Hearing, which took place in a room on the second floor, in the State Superior Court, on 4/24/95, Judge Comerford presiding. The Probate Judge sat at the back of the room and listened to the Hearing. About near the finish of the arguments, the Judge said: "Let us take a short break", and he proceeded to leave the room. The Appellant/Lipko, hereinafter Appellant, turned around, and the Probate Judge was not there. The Probate Judge and the Superior Court Judge were in collusion, and meeting. When Judge Comerford came back into the room, his face was red, and he said: The Court: "Well, the one thing that the Court won't do as a Superior Court is to function as a Probate Court*." Appendix, p. 21; and Record; Objection to Motion to Dismiss, Exhibit G, Transcript, Comerford, 4/24/95, p. 45.

Appeal A.C. 15095, CV-95-0049467, was filed at the Trial Court on 8/11/95. Appendix, p. 45. The preliminary statement of issues was sent back to Appellant on 9/20/95. Appendix, p. 48. The Appellee/Gonillo had 10 days to file a dismissal. On 8/11/95, A.C. 15095 was filed. Ten days from that date is 8/21/95. The Dismissal filed by the Appellees was filed 8/22/95, one day late. Appellate Court dismissed

filed 8/22/95, one day late. Appellate Court dismissed the Appellant's Appeal per that request. Appendix, p. 51.

Appeal was taken, A.C. 15898, on Motion to Reopen Judgment on 4/15/96, because the Appeal, A.C. 15095 was dismissed erroneously. The Order of the Appellaate Court, on 6/5/96, "It is further ordered, Sua Sponte, that Plaintiff/Lipko is prohibited from filing any further appeals or motions in this Court as to the underlying action CV-95-00049467S," so that the Appellant could not file any Objection to Motion to Strike. Appendix, p. 64.

The Appellate Court struck Appellant's Issues in Appeal A.C. 15898, because Appellee/Gonillo stated that these issues were heard on Appeal A.C. 15095 and dismissed.

The U.S. Supreme Court can view the evidence. Appendix, pp. 48-49, the preliminary Statement of Issues was never heard on A.C. 15095. Notice 10/4/95 and 9/20/95. A.C. 15095 was filed on 8/11/95 (Appendix, p. 45) and was dismissed on 10/25/95. Appendix, p. 51.-The Appellate Court, because of collusion and prejudice, contrived the story with Appellee/Gonillo. A Motion for Review was filed to correct this,which also was dismissed. Appendix, p. 67.

The Appellate Court struck the Appellant's three issues, in violation of his U.S. Constitutional Rights to due process under the U.S. Constitution, Amendment 14, Equal Protection, Fundamental Rights, because of prejudice, collusion, perjury and bias between an attorney and a judge. See Appendix B: Transcript, A.C. 15898, p. 2. Judge Dupont: "Well, the problem is that you have four issues, the first three issues are already

gone because they were raised in a prior appeal*."
Judge Dupont commits perjury in open Court.

A hearing took place on the Motion to Dismiss. CV-96-0053297S. Judge Skolnick. The Motion was denied on 8/6/96. Appendix. p. 69. The Defendant advised the Judge: Mr. Lipko: "Our Connecticut Constitution. which Your Honor is well familiar with. Article 1. Section 10. Right of Redress for Injuries. 'All courts shall be open*'."

A hearing on the Motion to Strike. before Judge Ripley. was denied. Defendant advised the Judge that the permanent injunction is prevented by the Connecticut Constitution. Article 1. Section 10: Mr. Lipko: "Thank you. Your Honor. I was served with an injunction. Your Honor. for a temporary and a permanent injunction against appealing. Judge Rush heard that on March 11th. He denied the request for a temporary injunction. He also denied a number of requests that my opponent had. such as. have me sign a statement that I will not file any more appeals. She wanted to know who my attorney is that consults with me and a number of other requests which are improper. I also stated in the motion to strike that I would like to strike the entire complaint for the basic reason that under Connecticut Law of Torts. Section 162. the essential elements of an action or a vexatious suit. It's a civil suit. which I agree. Prior civil action was brought without probable cause. I had probable cause. There was $2.000.00 assessed against the Estate for interest and penalties because of the incompetence of my attorney*. There was a. she has to prove malice.* The suit never terminated. I have now appealed to the Supreme Court*. Also. our Constitution of Connecticut. it allows me to appeal. I have a right as a citizen of this state and of the United States to DUE PROCESS OF LAW She

cannot close the Courts to me and that's under Article 1. Section 10. here in the Connecticut Constitution which Your Honor is well familiar with." There was other malfeasance which is the bank accounts. They were never accounted for and that is why I continually brought the action." Trans. Ripley, Judge, 11/18/96, pp. 6-8, Appendix B.

An issue is timely raised at trial if it is included in the trial brief. City Savings Bank of Bridgeport v. Dessoff, 3 Conn. App. 644, 647, 491 A. 2d 424, 426.

At Trial on 5/2/97, Mrs. Lipko testified that bank account #109500000211102 was not on S1 Form or the Inventory: Mr. Lipko: "This relates to this event here. That was the reason I appealed it." Appendix, pp. 27-28; and Record: Memorandum of Law in Support of Motion for Order Compelling Disclosure, Transcript, Curran, 5/2/97, (pp. 19-20). The Trial Judge H. Curran was notified that the permanent injunction was a blatant and clear deprivation of Constitutional Rights, citing State v. Evans, 165 Conn. 61; Constitution of Connecticut, Article 1, Sec. 10; and Constitution of the United States, Amendment XIV. Trial Brief, pp. 17-19, in State Superior Court, Milford, CT.

The Supreme Court will use strict scrutiny to review the claim that the permanent injunction issued by a state court does violate the fundamental rights and substantive due process of the Petitioner. The Supreme Court will find that the equal protection review, which includes to have access to the courts, has been violated by the State Courts. The claim by Respondent/Gonillo that the permanent injunction was necessary to close the Estate will be struck down, because the Respondent/Gonillo committed perjury by that statement, and the State Judges (Superior, Appellate)

based all their decisions on that statement. Appendix, pp. 77, 80, 84; and Record: Memorandum of Decision, p. 1, in Exhibit B, Objection to Motion to Dismiss, and attached brief, Brief of Respondent's A.C. 17591, where Gonillo commits perjury in her Brief three (3) times: The Brief, p. 6, past paragraph, statement: "Estate cannot close*." Appendix, pp. 115, 120, 121.

Pursuant to Connecticut State Statutes, appeals from Probate, Chapter 796, Sec. 45-288: "Appeal does not vacate or suspend decree appealed from 28C.442 - 34C, 112; id., 362; 75C, 312."; and "Every act of court of probate is subject to appeal, 10C. 192; 97C.442." Appendix, p. 109.

Amended notice of challenge to constitutionality was docketed in the Appellate Court on 12/10/97. Petitioner notified Appellate Court that Judge Curran invalidated his fundamental rights. Petitioner requested the Case go to the Supreme Court. The Connecticut Attorney General was notified as per Title 28, U.S.C. Sec. 451 and 2403, in which the constitutionality of any statute of a state is drawn into question. The Attorney General was also notified by State Representative, James A. Amann, in a letter dated 3/20/98, which can be found in Memorandum of Law in Support of Motion for Order Compelling Disclosure, filed in the U.S. District Court on 2/22/99. The Attorney General was again notified from the 2nd Circuit Appeals Court.

The following cases support the Review by the Appeals to the Supreme Court: "State trial judge should have advised petitioner of his right to appeal and as a constitutional corollary, his right to court appointed counsel on appeal if he were indigent, and failure to give such advice violated petitioner's rights under equal protection clause of U.S.C.A. Constitution, Amendment

14 and his right to counsel." U.S. ex rel. Singleton v. Woods, C.A. 7 (Ill.) 1971, 440 F.2d 835.

Res judicata: Inability of res judicata to writ of habeas corpus is inherent in every role and function of writ because conventional notions of finality of litigation have no place when life or liberty is at stake and infringement of constitutional rights is alleged. Clifton v. Attorney General of State of Cal., C.A. 9 (Cas.) 1993, 997 F.2d 660.

"If a question has been properly presented to state courts permitting one full and fair opportunity to decide the issue, the exhaustion requirement is satisfied with respect to habeas corpus petitions: after highest tribunal in the state has dismissed an appeal based on the same issue." Williams v. Scurr, D.C. Iowa 1986, 528 F. Supp. 62, affirmed 665 F. 2d 212.

CONCLUSION

The Petitioner raised the Constitutional questions in the Motion to Dismiss and at Trial, plus during appeals to the Appellate and Supreme Courts. Therefore, the Federal Question was timely and properly raised; and this Court has jurisdiction. The Relief sought: Vacate the judgment of the permanent injunction with damages; Reverse and Remand the Case to the District Court for further proceedings.

PETITIONER

A. LIPKO JR.